

## THE 2003 SUPPLEMENTARY FUND PROTOCOL: AN IMPORTANT IMPROVEMENT TO THE INTERNATIONAL COMPENSATIONS SYSTEM FOR OIL POLLUTION DAMAGE

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*The aim of this paper is to discuss new developments in the field of liability and compensation for oil pollution damage and to show the benefits of accession by Adriatic States to the 2003 Supplementary Fund Protocol. The international compensation system for oil pollution damage, which has been to a certain extent modelled on similar rules for nuclear damage has been working quite well for the last forty years and is one of the most successful compensation schemes in existence. This paper emphasizes the fact that only membership to all three tiers of compensation (governed by the CLC 1992, Fund 1992 and the 2003 Supplementary Fund Protocol) can ensure full financial protection to victims of oil pollution and that the accession of the Republic of Slovenia and the Republic of Croatia to the 2003 Supplementary Fund has been an important step with this regard. The lacunae of the system are that the various international conventions currently in force, do not cover spills of bunker oil (with certain exceptions with regard tankers), nor hazardous and noxious substances. It is proposed therefore that the Adriatic States play an important role in the promotion of the Bunker and HNS Convention which are not yet in force. It is also proposed that questions of civil liability should be left separate from questions of criminal liability and that the reopening of the CLC Convention is not advisable at this stage.*

*Key words: liability and compensation for oil pollution damage, 2003 Supplementary Fund Protocol, maritime law conventions, protection of marine environment*

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## I. INTRODUCTION

*“new dangers demand new solutions...”*

As a general rule, torts or wrongs committed by or in relation to ships would be governed by the same rules of tort as govern other persons or entities. The burden of proof would normally be on the party that claims compensation (*ex. the victim of oil pollution*).<sup>1</sup> Such person would have to prove all the elements of tort. In ship related incidents the most probable scenario is the tort of negligence. In order to prove such tort the claimant will have to show that there was a duty of care that the duty of care was breached and that damage resulted from such breach.<sup>2</sup>

However, even in the case that the claimant managed to prove all the elements of the torts, including the quantification of the damage (*which is not at all an easy task*), the claimant would still have to take into account some specific rules of maritime law, as for example the right of the carrier (*shipowner*) to limit or even in certain cases to exclude its liability.<sup>3</sup> It could well happen that under general rules, the victim of oil pollution managed to prove all the elements of the tort, including the quantification of the damage, but he could not recover the loss due to the right of the shipowner, charterer or operator to limit or exclude its liability. For this and many other reasons, which will be explained later on, the position of a victim of oil pollution under general maritime law is not satisfactory.

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\* This paper is partially based on a set of lectures which the authors delivered in the framework of the courses on Marine Environmental Law and Marine Insurance (2005, 2006) at the IMO International Maritime Law Institute in Malta.

<sup>1</sup> Popp A., Q. C., Lecture notes on liability and compensation in maritime law as modified by international conventions (unpublished), IMO IMLI lecture notes, Malta, 2002.

<sup>2</sup> In cases involving pollution from ships other torts may be relevant, as nuisance and trespass (see Popp, p. 5)

<sup>3</sup> The right of the carrier to limit his liability together with the notion of general average is one of the oldest institutes of general maritime law. This principle is closely related to the concept of the “maritime adventure” according to which the many risks of such adventure should be borne by all the participants to it (shipowner, cargo owners and freight). Another reason for such rules is the desire of states to foster maritime trade to increase their fleets. The concept of a “common maritime adventure” is also deeply rooted in the principles of general average, salvage and marine insurance.

It is our intention therefore to analyze the legal position of the victim of oil pollution before and after the adoption of the Civil Liability and Fund Conventions and the benefits of accession to the 2003 Supplementary Fund Protocol.

## II. THE ORIGIN OF THE INTERNATIONAL COMPENSATION SYSTEM FOR OIL POLLUTION DAMAGE

It is interesting that oil pollution was not deemed to be a huge problem during the first half of the previous century. The self - cleaning capacity of the sea was for centuries considered to be more than sufficient to deal with wastes that entered into it as the result of human activities. The same belief applied for wastes originating from ships, including oil.<sup>4</sup> This changed dramatically in March 1967, when the Liberian registered tanker *Torrey Canyon* went aground off the south west coast of the United Kingdom.<sup>5</sup> The spill was the largest spill in maritime history up to that point in time and it triggered a reaction from media and legislators comparable to that of the *Titanic* accident in 1912 (*or the Erika and Prestige accidents in 1999 and 2002*).<sup>6</sup>

If we leave aside the many practical difficulties which the coastal states (*UK, France*) experienced when dealing with the accident<sup>7</sup> we can recognize that the main benefit of the accident was that it brought to light a number of shortcomings both in public and private international law. These were subsequently addressed at the international level with a set of international conventions (*CLC, Fund, Intervention Convention, MARPOL*).

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<sup>4</sup> The first signs indicating that oceans could not cope with all ship-generated wastes appeared after the introduction of oil as the main fuel for ships (from 1930 to 1950) The OILPOL Convention adopted in 1954 represented an improvement with this regard although it dealt only with "operational" without embarking on "accidental" oil pollution.

<sup>5</sup> Some 80,000 tons of crude oil were released causing extensive pollution damage along both the British and French coasts.

<sup>6</sup> Grbec M., *Odgovornost za škodo zaradi onesnaženja morskega okolja z nafto*, Podjetje in delo, No. 2, Ljubljana, 2002, p., 257.

<sup>7</sup> All sorts of emergency measures were attempted, many of which made matters even worse; lots of chemical dispersants were eventually sprayed onto the oil slicks, but these were more lethal for life than the original oil.

An interesting problem to which public international law did not provide a clear answer at that time was whether the coastal state has a right of action against a stricken tanker, located in international waters and threatening the maritime zones and/or territory of a coastal state.<sup>8</sup> The British Government asserted that such right exists under customary international law, but this was far from being clear.

The incident also raised serious problems with respect to civil liability. The arrangements concerning the ownership, management and operation of tankers are usually complex and more likely than not involve important questions of private international law. The victims of oil pollution therefore had serious problems in identifying the liable party amongst the many interests involved in the carriage of oil (*shipowner, charterer, operator...*) and this represented a considerable obstacle to them as to whom to approach and, if necessary, sue for compensation. In other words, it was not clear at all who was at the end of the day responsible for paying for oil the pollution damage. Even the old attorney's rule stating that "if you are not sure who is the liable - guilty party, just sue all of them." was not without problems, as it was not clear where, in which courts, claimants could pursue their claims.<sup>9</sup> The traditionally short prescription periods which are characteristic of maritime law complicated things even further.<sup>10</sup>

It could well happen therefore, that the claimant managed to overcome all the difficulties related to the identification of the relevant party, burden of proof, quantification of the damage, jurisdiction and applicable law, but none-

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<sup>8</sup> The tanker had grounded in a location, which at the time was outside British territorial waters and so the decision of the British authorities to take action against the grounded vessel in international waters, including eventual bombing the wreck, was considered to be controversial (see Popp, Q. C. - p. 10). This right was in 1969 confirmed in the "Intervention Convention".

<sup>9</sup> Another important problem faced by the victims was represented by the shipowner's insurance coverage for third parties liabilities (including oil pollution). The majority of ships are nowadays entered with one of the P&I clubs (*mutual insurer*). One of the main rules of P&I insurance is the "pay - to be paid rule" according to which a member (in most cases a shipowner) in order to be entitled to an indemnity in respect of liabilities or expenses incurred by him, "*must first himself have discharged the liabilities or expenses concerned*".

<sup>10</sup> Needless to say, that this provision could cause significant hardships to victims of oil pollution in cases, where the shipowner is insolvent or bankrupt.

theless still faced the possibility of the guilty party evading his liability or at least limiting it to a relatively small amount.

The lack of clarity in the legal framework for dealing with the legal consequences of this disaster led to a lively public debate. The first practical result of the accident was the creation of the Legal Committee of the IMO (*at that time IMCO*) with the mandate of studying the public and private law issues raised by this incident.<sup>11</sup> However, the newly established legal committee was not alone in this effort. An important part was played by the CMI, which turned its attention mainly to private law issues having to do with liability and compensation. The result of the joint work of the two bodies were two draft conventions (*the CLC and Intervention Convention*<sup>12</sup>), which together laid the foundation internationally, for response to oil pollution accidents.

The two conventions were adopted together at a diplomatic conference held in Brussels in November 1969. The mood at the conference can be best seen from the introductory address of the Belgian delegate who stated:

*“existing maritime legislation was inadequate to solve the numerous legal problems arising out of cat astrophes of this kind, in the field of both public and private law. It was essential that solutions be found to those problems. Those solutions would probably depart from the traditions of maritime law, but “new dangers demanded new solutions”...*

The two conventions provide answers in an innovative way to the many legal questions raised by the Torrey canyon incident. The excuse for a departure from the traditional rules of maritime law was found in the fact that ships in the new era are capable of doing damage to a large undetermined class of victims unconnected with the trade, which was not the case in previous times.<sup>13</sup>

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<sup>11</sup> The Legal IMO Legal Committee, which is nowadays an indispensable organ within the IMO, was therefore established after and as a result of the Torrey Canyon accident.

<sup>12</sup> The Intervention Convention confirmed the right of a coastal State to “prevent, mitigate or eliminate grave and imminent danger to their coastlines or related interests from pollution or threat of pollution of the sea by oil following upon a maritime casualty” (Article 2). It confirmed the right of a coastal state to undertake the necessary actions against the stricken vessel located on the high seas, which is threatening the coast and related interest.

<sup>13</sup> Popp A., Q. C., Lecture notes on liability and compensation in maritime law as modified by international conventions (unpublished), IMO IMLI lecture notes, Malta, 2002.

## II.1 Strict liability in international law and the Civil Liability Convention (CLC)

The CLC Convention is an excellent example of a successful application of what is sometime referred to as the “Titanic effect” (*adoption of legislation after the occurrence of a maritime disaster*).

The added value of this convention lies in the fact that it provides straight answers to specific (legal) problems raised by the Torrey Canyon incident. The fact that the Civil Liability Convention has been used as a model for all subsequent conventions in this field, is an additional proof of its success.<sup>14</sup> It must be emphasized however, that the CLC Convention does not cover all types of pollution damage<sup>15</sup> caused by oil, but only persistent oils<sup>16</sup> carried as cargo. Bunkers spills from non-tankers, chemicals and light diesel oils are therefore excluded.

The CLC Convention addressed three main questions, which arose as a result of the Torrey Canyon accident: a.) Whom to sue?; b.) The right of the shipowner to limit or exclude his liability; (c ) Jurisdiction of the Court?

### *i. Whom to sue?*

One of the main improvements of the Civil Liability Convention is the incorporation of the principle of ship owner’s strict liability. The purpose of such “channelling” of liability is obviously to help victims of oil pollution easily find the liable party.

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<sup>14</sup> HNS, Bunker Convention.

<sup>15</sup> Pollution damage is according to Article 1 of the 1992 CLC defined as loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for the impairment of the environment other than loss or profit for such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; the costs of preventive measures and further loss or damage caused by preventive measures.

<sup>16</sup> Persistent oils are those oils, which because of their chemical composition, are usually slow to dissipate naturally when spilled into the marine environment and are therefore likely to spread and so require cleaning up (crude oil, fuel oil, heavy diesel oil and lubricating oil).

This was not a completely new concept in international law, as it had been already embodied in some nuclear conventions adopted in the fifties and sixties of the previous century. An interesting convention which most likely influenced the drafters of the Civil Liability Convention was the *Convention on the Liability of Operators of Nuclear Ships*, adopted in 1962, which contained at least three elements particularly important for subsequent civil liability conventions in the maritime field: (i) strict or absolute liability on the part of a specific party (*in this case the operator of a nuclear ship*), (ii.) channelling of liability to that party to the exclusion of all other potential parties and (iii.), last but not least, the obligation to maintain insurance or other financial security. Needless to say that these elements represent important departures from the ordinary rules of tort law, while the obligation to maintain insurance represents an important departure from the general rules of insurance law.<sup>17</sup>

According to the CLC Convention (1969 and 1992) claims for pollution damage can be made **only** against the registered owner of the ship concerned. Claims against servants or agents of the ship owner are, according to the 1969 CLC Convention, expressly prohibited. The 1992 Protocol is still clearer in this regard. It prohibits not only claims against the servants or agents of the owner, but also claims against the pilot, the charterer (*including a bareboat charterer*), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.<sup>18</sup> The owner is therefore liable irrespective of the existence of any fault or negligence.

Furthermore, the owner of a tanker carrying more than 2 000 tones of persistent oil as cargo is obliged to maintain insurance to cover his liability under the applicable CLC Convention. Under the CLC Conventions claims for pollution damage can be brought directly against the insurer.<sup>19</sup>

The victim of oil pollution can therefore pursue its claim against the register shipowner, its insurer (right to a direct action) or both. No doubt that the situation of a victim of oil pollution has been improved considerably.

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<sup>17</sup> Popp, Q. C., Lecture notes, IMO IMLI, 2002.

<sup>18</sup> The identification is based on administrative evidence - person or persons registered as the owner of the ship or, in the absence of registration, person or persons owning the ship (Article 3 (4) of the 1992 CLC Convention).

<sup>19</sup> Taking into account that the shipowner's insurer in most cases is a P& I Club, the right to a direct action represents a substantial departure from the traditional P& I rules, "pay to be paid".

*ii. Right of the shipowner to exclude or limit his liability*

The ship owner is exempt from liability under the CLC Convention only if he proves that the damage resulted from an act of war, by sabotage by a third party or that the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational lights.<sup>20</sup>

If the damage resulted as a result of one of the listed exceptions the owner of the vessel is exempt from liability. Otherwise, the owner is strictly liable, however, he can limit his liability to an amount which is linked to the tonnage of the vessel. In the 1992 CLC Convention, the limits of liability were increased, for ships of 2.000 tons or less, from 133 SDR per limitation ton to a fixed amount of 3 million SDR (US\$ 4 million). And the maximum amount payable by the ship owner has changed from 14 million SDR to 59.7 million SDR (US\$ 75 million). According to the 2000 amendments (*which entered into force on 1st of November 2003*), the maximum amount payable by the shipowner has been increased to 89.770.000 SDR.<sup>21</sup>

As a result of the increased limits of liability, the test for breaking the ship owner's right of limitation has moved from "actual fault or privity" of the ship owner, which was incorporated in the 1969 CLC Convention, to the concept of "wilful misconduct of the ship owner". Therefore, according to the 1992 CLC Convention, the ship owner is deprived of his right to limit his liability only if it is proved that the pollution damage resulted from the ship owner's personal act or omission, committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result. This change, which brings the test into line with the test in the 1976 Convention on limitation of liability for maritime claims,<sup>22</sup> will make the ship owner's right to limit much stronger.<sup>23</sup>

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<sup>20</sup> Article 3 (2) of the 1992 CLC Convention.

<sup>21</sup> Article 3 (1) of the 1992 CLC Convention.

<sup>22</sup> Article 4 of the 1976 Limitation Convention states that "A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

<sup>23</sup> The burden of proof is on the victim and therefore these limits are many times referred to as the "unbreakable limits".



*iii. Jurisdiction of the Court*

The jurisdiction of the court is provided by article IX of the CLC Convention, according to which court action must be brought in a state or states where the pollution damage occurred. If the pollution damage occurred in the EEZ (*or equivalent zone*)<sup>24</sup> of a State A, court action must be brought only in front of the competent court of that State. If the pollution damage affected more than one State, for example State A and State B, then the court action must be brought in one of the two affected states, at the claimant's choice.

However, if the ship owner is entitled to limitation, he must constitute a limitation fund in the competent court of a State party to the CLC where the pollution occurred. The constitution of the limitation fund result in the protection of the ship owner's other assets and the release of any of his ships that may have been arrested. In other words, after the constitution of the limitation fund, claims can be submitted only against that fund.

After the Fund has been constituted, the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.<sup>25</sup>

The CLC Convention therefore provided clear rules also with regard the jurisdiction of the court and alleviates the burden of proof in this regard.

## **II.2 The Role of the IOPC Fund(s) in the international compensation system**

The 1969 CLC Convention solved most of the legal problems which arose as a result of the Torrey Canyon accident, albeit not to the principal one felt by victims of oil pollution - the right of the shipowner to limit or in certain cases to exclude its liability. The CLC Convention was therefore complemented in 1971 with another Convention, which created an international fund (organization), from which victims of oil pollution can claim compensation in cases where the shipowner is able to limit or completely exclude its liability.<sup>26</sup> The 1971 Fund Convention was later amended by the 1992 Protocols, which brought to light

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<sup>24</sup> Exclusive Fisheries Zone, Fisheries - Ecological Zone, Ecological Zone.

<sup>25</sup> Article IX (3)

<sup>26</sup> See also Art. 235 of the UNCLOS Convention.

a separate international Fund, the 1992 IOPC Fund, with a wider scope of application and higher limits of liability.<sup>27</sup> With the entry into force of the 2003 Supplementary Fund protocol in 2005, a third international tier (or fund) providing compensation to victims of oil pollution was established.

The function of the Funds is to provide compensation to victims of oil pollution in a State party to the relevant Fund Convention in cases where the victims do not obtain full compensation under the applicable CLC Convention.<sup>28</sup> However, even the liability of the IOPC Fund is limited. As of 1st November 2003,<sup>29</sup> the total amount available under the 1992 Conventions increased from 135 million to 203 million SDR, and if three States contributing to the Fund receive more than 600 million tonnes of oil per annum, the maximum amount is raised to 300.740.000 SDR.<sup>30</sup> As two of the main oil importers, China and USA are not state parties to the 1992 IOPC Fund, this is quite unlikely to happen.<sup>31</sup>

The IOPC Funds do not pay compensation if the damage occurred in a State which was not a member of the respective Fund at the time of the accident, if the pollution damage resulted from an act of war or was caused by a spill from

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<sup>27</sup> Under the 1992 Conventions the geographic scope is wider. The coverage extends also to damage occurred in the Exclusive Economic Zone, or equivalent area of a State party, as for example the Exclusive Fishery Zone. The 1992 Conventions cover also the cost of preventive measures before the spill has actually occurred, while the “old” conventions cover only the costs of preventive measures, taken after oil has actually been spilled. Furthermore, the new protocols apply, in certain circumstances; also to spills of tankers during ballast voyages. This right is limited only to voyages, which follow the actual carriage of oil by sea, if it is not proved, that there are no residues of such carriage of oil in bulk aboard.

<sup>28</sup> Article 3 (2) of the CLC Conventions.

<sup>29</sup> The amount of compensation which is available from the 1971 Fund could not exceed 60 million SDR (US\$ 76 million), including the sum actually paid by the shipowner, under the relevant CLC Convention.

<sup>30</sup> As two main oil importers, USA and China are not State parties to the 1992 Fund, this figure is almost impossible to achieve.

<sup>31</sup> A State party cannot join the 1992 IOPC Fund without being a state party to the 1992 CLC Convention, the opposite is possible. If a State is a state party only to the CLC Convention, then the victims of oil pollution in that state cannot claim compensation from the IOPC Fund, while the shipowner is entitled to limit or exclude its liability on the basis of the Convention. Such situation is clearly unsatisfactory, although some states, the most notably example being China, have opted for it.

a warship or if the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined in the applicable convention.<sup>32</sup>

Under the applicable CLC or FUND Convention actions for compensation against the shipowner, his insurer or ultimately the IOPC Fund, have to be filled before the Courts of the State Party to that Convention in the territory, territorial sea or EEZ of which damage was caused.<sup>33</sup> However, in most cases a settlement has been achieved out of court.

If the total amount of the claims exceeds the total amount of compensation available under the CLC and Fund Convention, the compensation paid to each claimant would be reduced proportionately.

### III. CONTRIBUTORS TO THE INTERNATIONAL COMPENSATION SYSTEM FOR OIL POLLUTION DAMAGE

The international compensation system for oil pollution damage is financed by two major groups of contributors: shipowners (*and their insurers*) on the basis of the CLC and oil importers (*oil industry*) on the basis of the Fund Convention. Registered shipowners are obliged to pay compensation to victims of oil pollution after an accident has occurred on the basis of the provisions of the CLC Convention. On the other hand, the oil industry is financing the second tier (*and third tier*) through contributions to the IOPC Fund (s).

Contributors to the IOPC Fund are “persons,”<sup>34</sup> which have received more than 150.000 tons of contributing oil in a State Party during the course of a calendar year.<sup>35</sup> Contributors are not states, but persons (mostly oil companies), which have received in the relevant calendar year more than 150.000 tons of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a member of the relevant Fund, after the carriage by sea.<sup>36</sup>

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<sup>32</sup> Sea going vessel or sea borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo (Art. 1 CLC)

<sup>33</sup> Art. 9 (1) of the CLC Convention and Art 7 (1) of the IOPC Fund Convention.

<sup>34</sup> **Person** means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions. (Article 1 (2) of the 1992 CLC Convention).

<sup>35</sup> **IOPC FUNDS ANNUAL REPORT 2005**, Report on the activities of the IOPC Funds in 2005, London.

<sup>36</sup> The major contributors to the 1992 IOPC Fund, in the calendar year 1999, were Japan (21.15% of the total), Italy (11.25%), Republic of Korea (10.29 %), and Netherlands

The relevant element is the carriage of oil by sea and not the carriage of oil from one state to another.

The obligations to pay contributions also arises in cases where oil is transported between two ports or terminals within the same State or transported by ship from an offshore production rig. Contributions are paid by the individual contributors directly to the IOPC Fund; however the State shall communicate every year to the relevant Fund the name and address of any person in that State who is liable to contribute,<sup>37</sup> as well as the quantity of contributing oil received by any such person (submission of oil report). Governments are not responsible for these payments, unless they voluntarily accepted such responsibility.<sup>38</sup>

However, even the liability of the 1992 Fund is limited (203 million SDR). If the total amount of claims exceeds the total amount of compensation available under the CLC and Fund Convention, the compensation paid to each claimant would be reduced proportionately. The two largest tankers accident in the last decade (*Prestige & Erika*) showed that the amount of liability provided by the 1992 IOPC Fund (*together with the shipowner and or his insurer*) may not be enough to cover the entire damage which could arise out of a single major accident. The victims were facing therefore the prospect of a proportionate payment, which was not deemed to be an appropriate solution for many states, and in particular it was not deemed to be an appropriate solution for state parties of the European Union.

#### IV. MAIN CHARACTERISTICS OF THE 2003 SUPPLEMENTARY FUND PROTOCOL

The maritime sector is a global sector and therefore a global initiative under the auspices of the IMO should be preferred over a regional one. In practice regional initiatives by the EU and US have often triggered a reaction from the IMO, and the establishment of the 2003 Supplementary Fund Protocol was not an exception.

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(8.28 %). The USA is not a State party neither to the CLC nor to the Fund Conventions. It has its "national" compensation system, which is enacted in the Oil Pollution Act (1990).

<sup>37</sup> Only persons who received more than 150.000 tons of contributing oil should be reported.

<sup>38</sup> IOPC Annual Report 2005, London, pp. 29 - 31.

After the Erika accident in 1999, the European Commission proposed two packages of legislation aimed at improving safety at sea, named Erika I. and Erika II. One of these measures (*the third proposal of the Erika Package II*), also contained some additional measures aimed at upgrading the international system for liability and compensation for oil pollution damage.

With this proposal the Commission proposed the establishment of an additional European Fund (COPE), which would provide compensation for oil pollution damage up to 1 billion Euros, instead of ca 200 million EUR, and the imposition of severe penalties on polluters (*not just to oil polluters, but also to others such as bunker oil, chemicals*).<sup>39</sup>

The proposal triggered the reaction of the IMO, which in order to prevent a “regional approach” adopted in May 2003, a Protocol to the 1992 Fund Convention, under which an independent “supplementary” fund was established, open to all States, not just to EU Members. Therefore, from 2005, State parties to the 1992 Fund may opt to join (*but they are not compelled to*) a new international Fund, which provides compensation to victims of oil pollution in those relatively rare cases where the compensation provided by the 1992 CLC and Fund Convention does not suffice to cover the entire damage.

The main reason for creating a new international Fund was to avoid “*pro rata payments*” in cases of major accidents (*as the Erika, Prestige*). The participation within this Fund is optional and is open to all States, which are States parties to the 1992 CLC Convention. Accordingly, in order for a state to join the 2003 Supplementary Fund, it must first be a state party to the 1992 CLC and Fund Convention. The three conventions are therefore closely interrelated.

The function of the 2003 Fund protocol is to supplement the functioning of the 1992 CLC and Fund Conventions, but only in states which are parties to the Protocol. It must be emphasized nonetheless, that the 2003 is a separate legal entity (*international organization*) with its own organs.<sup>40</sup>

Since the entry into force of the Supplementary Fund in 2005,<sup>41</sup> the total amount of compensation payable for any one incident has been limited

<sup>39</sup> In addition to the creation of the COPE Fund, the proposal also includes the introduction of a sanction or a financial penalty, to be imposed on any party, whether a ship-owner, a charterer, a classification society or anybody else, who has contributed to the oil pollution by his grossly negligent conduct or omissions.

<sup>40</sup> For the time being the director of the 1992 IOPC Fund is also the Director of the 2005 Supplementary Fund protocol and the Funds also have a common secretariat.

<sup>41</sup> The entry into force requirements were ratified by at least eight States which have received a combined total of 450 million tons of contributing oil. These requirements were met in December 2004.

to a combined total of 750 million Special Drawing Rights (SDR) (*just over US\$1,145 million*) including the amount of compensation payable under the existing 1992 CLC/Fund Convention). Some States, including Japan, advocated unlimited liability, but this proposal was ultimately rejected.<sup>42</sup>

An obvious conclusion is therefore, that in order to get full (financial) protection for damages arising out of a spill of oil from tankers, a State should join both the 1992 IOPC Fund and the 2003 Supplementary Fund Protocol (*if we leave aside the Bunker Convention and the HNS*).<sup>43</sup>

### (ii.) Improvements brought by the 2003 Supplementary Fund Protocol

The main function of the Supplementary Fund is to pay additional compensation to any person suffering pollution damage if that person has been unable to obtain full and adequate compensation for an '*established claim*' under the terms of the 1992 Fund Convention.<sup>44</sup> In other words, if the victim of oil pollution has been unable to obtain full compensation from the shipowner, his insurer and the 1992 IOPC Fund, and if the damage has occurred within the EEZ, territorial sea, internal waters or territory of a state party to the 2003 Supplementary Fund protocol, then he is entitled to compensation for the remaining difference from the 2003 Supplementary Fund.

The 2003 Fund may be obliged to pay compensation because either: (i) the total damage exceeds, or (ii) there is a risk that it will exceed, the applicable limit of compensation laid down in the 1992 Fund Convention in respect of any one incident (*203 million SDR*).

Victims of oil pollution cannot claim compensation automatically from the 2003 Supplementary Fund, as two other requirements are needed: (i) there must

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<sup>42</sup> It is expected, however, that the increased compensation which is approaching one billion Euros, will put an end to the practice of pro-rating of payment of claims, which has led to criticisms of the 1992 Convention.

<sup>43</sup> The 2003 Fund will supplement the compensation available under the 1992 Civil Liability Convention (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), with an additional, third tier of compensation. The scope of application of the 2003 Supplementary Fund Protocol is in line with the scope of application of the 1992 CLC and Fund Conventions.

<sup>44</sup> Art. 4(1) of the Supplementary Fund Protocol.

be an *established claim* and ii.) in practice there must be a final or temporary decision of the Assembly of the 1992 IOPC Fund that payment will be made only for a portion of the claim. The Assembly of the Supplementary Fund will then decide whether and to what extent the Supplementary Fund shall pay the portion of any established claim (provisionally) not paid under the 1992 CLC and the 1992 Fund Convention.

It is proposed now to assess the requirements which must be fulfilled in order for a victim of oil pollution to get compensation from the 2003 Supplementary Fund.

First of all there must be “an established claim”.<sup>45</sup> A mere assertion or claim that the damage has occurred is not enough. In most cases the IOPC will recognize a certain claim with an out of court settlement. In some other cases, especially where the victim of oil pollution and the 1992 Fund could not agree on the existence or extent of the damage, the final decision will be reached by the judgment of a competent court(s) in a state party, which shall not be subject to ordinary forms of reviews.<sup>46</sup>

The second requirement for the payment of compensation is that the 1992 IOPC Fund considers that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed, the aggregate amount of compensation available under the 1992 Fund Convention and as a consequence the 1992 Fund (its Assembly) has decided *provisionally* or *finally that payments* will only be made for a proportion of any established claim.

In such cases the 2003 Supplementary Fund is liable to pay the remaining compensation (*the difference between the established claim and the amount recovered under the 1992 CLC & Fund Convention*) as well as in cases where the Assembly of the 1992 IOPC Fund has decided just provisionally, in order to protect the interest of all claimants also future, to undertake a “pro rata payment”. The 2003 Supplementary Fund retains the right of subrogation against the 1992 Fund, in cases the later increases the level of payment or pays the entire damage.

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<sup>45</sup> The definition of an “established claim” is found in Article 1 Paragraph 8 of the 2003 Supplementary Fund Protocol according to which this is a “claim which has been recognized by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund and not subject to ordinary forms of review, and which would have been fully compensated if the limit set out in Article 4 paragraph 4 of the 1992 Fund Convention had not applied to that incident”.

<sup>46</sup> See Article 1(8) of the 2003 Supplementary Fund Protocol.



### (iii.) Contributors to the 2003 Supplementary Fund

The 2003 Supplementary Fund protocol is an amendment to the 1992 Fund Convention and not to the CLC Convention. This formally means that it should be financed by oil interests (*receivers of oil*) and not by the shipowning interest (shipowner, P&I Clubs).

Accordingly, annual contributions to the Fund should be made in respect of each Contracting State, by any person who, in any calendar year, has received total quantities of oil exceeding 150,000 tons.<sup>47</sup> Contributors to the 2003 Supplementary Fund are therefore the same as with regard to the 1992 CLC Fund. This in turn means that contributors (*in most cases oil companies*) have to pay two separate contributions, the first to the 1992 IOPC Fund and the second under the 2003 Supplementary Fund Protocol.

### (iv.) Article 14 of the 2003 Supplementary Fund Protocol (a membership fee)

The 2003 Supplementary Fund Protocol is modelled on the 1992 Fund Convention, but there is one important difference which is worth mentioning.

An interesting feature of the 1992 Fund Convention is the fact, that in the absence of contributors (*therefore if there are no companies receiving more than 150.000 tonnes of persistent oil in a state party*), the coverage provided by the 1992 IOPC is a “free service”.<sup>48</sup> Such situation can be only explained by the fact that the “international compensation system for oil pollution damage” is a sort of “mutual insurance”, based on the concept of international solidarity where payment of compensation to victims of oil pollution in one state are in most cases financed by the payment of contributions in another state.<sup>49</sup> The

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<sup>47</sup> Contributions should be paid by those oil receivers in a state party which in a calendar year, have received, in total, quantities exceeding 150,000 tons in the ports or terminal installations of the state by sea carriage, and in any installations situated in that territory which have been carried by sea and discharged in a port or terminal installation of a non-Contracting State.

<sup>48</sup> A case which proves this fact is the example of the Republic of Slovenia, where there are no contributors, and accordingly the coverage provided by the 1992 FUND is a “free service”.

<sup>49</sup> It is rather strange therefore that certain states which do not have big oil importers have not ratified or at least have waited long before ratifying the 1992 Fund Convention. For



2003 Supplementary Fund brought an important change with this regard, and this is of utmost importance for states as Slovenia, with no oil importers (persons) bound to contribute to the IOPC Fund.

Article 14 of the 2003 Supplementary Fund Protocol provides for what is nowadays referred to as the “*membership fee*”. According to the mentioned article there must be a minimum aggregate receipt of 1,000,000 tons of contributing oil in each Contracting State.

This means that, if the actual receipts of contributing oil in a state are less than 1 million tons, there is deemed to be a minimum receipt of 1 million tons of contributing oil in the state, and the Contracting State which chooses to become a party in such circumstances to the Protocol assumes the liability to pay the contribution based on the deemed 1 million tons receipt, or the difference between the 1 million tons deemed receipt and the actual receipts within the state which fall within the Protocol.

Therefore, if there are no contributors in a State party to the 2003 Supplementary Fund Protocol, the State itself will have to arrange for the payment of contribution based on 1 million tones deemed receipt. In cases that there are some contributors, which however together declared less than 1 million tones of contributing cargo, then the contracting State will have to pay for the difference or for the whole amount based on the 1 million tones deemed receipt.<sup>50</sup>

There are mainly two reasons for the inclusion of such a provision into the text of the protocol. The first reason is quite obvious. Due to the extensive coverage provided by the 2003 Supplementary Fund Protocol, there was a need to ensure at least a minimum contribution to the very considerable compensation offered by the Supplementary Fund. A situation where certain states would be covered by the 2003 Supplementary Fund (for more than 1 bn EUR), without contributing anything, was not deemed to be appropriate anymore.<sup>51</sup>

The second reason is less straightforward. It seems that with the proposal for the inclusion of the “membership fee”, the Funds tried to enforce the proper reporting of oil receipts by the governments, which has proved to be one of the

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example, the 1992 CLC and Fund Conventions in the Republic of Slovenia entered into force only in 2001, almost five years after the entry into force of the 1992 CLC & Fund Conventions.

<sup>50</sup> That means that the member state is liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 mio tones and the aggregate quantity of actual contributing oil receipts reported in respect of that state.

<sup>51</sup> Art. 14 of the 2003 Supplementary Fund Protocol.

major problems in the functioning of the international compensation Fund. The reason is quite logical. It is expected that State parties will take this obligation much more seriously, as in the absence of such report, the State itself will have to pay a contribution based on 1 million tonnes deemed receipt.<sup>52</sup> The importance of the submission of oil report can be seen also from Article 15 of the Supplementary Fund Protocol according to which “... *no compensation shall be paid by the 2003 Supplementary Fund Protocol for pollution damage in respect of a given incident or in respect of preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to the article 13, paragraph 1 and paragraph 1 of this article have been complied with within one year after the Director of the Supplementary Fund has notified the contracting state of its failure to report*”.<sup>53</sup>

For States as Slovenia, which do not have big receivers of oil on its territory (contributors), the provision embodied in Article 14 of the Supplementary Fund Protocol is of utmost importance.

#### **(v.) Jurisdiction of the court in cases involving the 2003 Supplementary Fund Protocol**

Jurisdiction is dealt with in Article 7 of the Protocol and for the most part mirrors the provisions of the 1992 Fund Convention.<sup>54</sup> In order to understand

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<sup>52</sup> Contracting States are obliged according to Article 13 of the 2003 Protocol to communicate to the Director of the Supplementary Fund the relevant information on oil receipts in accordance with Article 15 of the 1992 Fund Convention. However, communications made to the Director of the 1992 Fund under Article 15 paragraph 2 of the 1992 Fund Convention will be deemed also to have been made under the 2003 Protocol.

<sup>53</sup> Another important consideration which should “force” states to submit this communication is the fact (provision) according to which if the Contracting State does not fulfill its obligations to submit this communication and this results in a financial loss for the Supplementary Fund, that State will be obliged to compensate the Supplementary Fund for such loss (Article 13(2)).

<sup>54</sup> According to Article VII of the 2003 Supplementary Fund Protocol “Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 CLC against the shipowner or his insurer/guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation, unless that court is in a Contracting State which is not a party to the 2003 Protocol, in which case, the action against the Supplementary Fund

the rationale of Article VII, we have to make reference also to Article IX of the 1992 CLC Convention and to Article XV of the 1992 Fund Convention.

As a general rule, the competent court should be a Court of the State where the pollution damage occurred and where the shipowner established a limitation fund. What might happen in practice is that the pollution damage affects more than one State and that an action against the shipowner and the 1992 Fund has been brought in front of a competent court of a State, which is a State party to the 1992 CLC (*and FUND*) Convention, but not to the 2003 Supplementary Fund Protocol.

Article VII provides a clear answer to this dilemma. In such cases, victims of oil pollution may claim compensation either *before a court of the State where the Supplementary Fund has its headquarters (UK) or before any court of a Contracting State to the 2003 Protocol, competent under Article IX of the 1992 CLC*. It seems that in such cases claims will most likely be brought in front of domestic courts.

## V. BALANCE OF CONTRIBUTIONS

The 2003 Supplementary Fund Protocol is an amendment to the 1992 Fund Convention and accordingly it should be financed by “oil receivers” (persons) in state parties to the 2003 Supplementary Protocol. The Protocol therefore does not impose any additional financial burden on shipowners and their insurers. It is clear that such situation could have altered the balance of contributions between shipowners and oil receivers which is one of the pillars of the international system. According to representatives of the oil industry, such situation would be also unfair.

Some States and the European Commission were (*and obviously still are*) of the opinion that the time was right for a reopening and for a more substantive amendment of the CLC convention. Amendments should have touched also upon fundamental principles of the international system such as the strict liability of the shipowner, the immunity of certain layers as for example charterers, and the modification of the test for breaking the limits of liability of

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shall at the option of the claimant: (i) be brought either before a court of the State where the Supplementary Fund has its headquarters (UK), (ii) or before any court of a Contracting State to the 2003 Protocol, competent under Article IX of the 1992 CLC.”

the shipowner (*wilful misconduct*).<sup>55</sup> On the other hand, some other States were worried that the reopening and substantial amendment of the Civil Liability Convention could endanger the functioning of the entire international system, which has worked quite well for almost forty years.<sup>56</sup>

The Assembly of the 1992 IOPC Fund created in the year 2000 a working group with the task of assessing whether there is a need to amend the existing international compensation system. It was this working group which proposed the establishment of an optional additional compensation Fund (*also under the influence of the European proposal to establish COPE*). Additionally, the point was made that the Supplementary Fund financed permanently by oil receivers could distort the balance between the contributions of shipowners and oil receivers to the regime.<sup>57</sup>

As it was not possible to achieve agreement within the working group about the amendment, even if limited of the Convention, the Working Group was dismantled in October 2005.

Nonetheless, the shipowning interests (*shipowners and insurers*) were well aware that it is crucial to maintain an equitable balance between the burdens imposed on the two industries. They argued that a voluntary increase of the limits of liability of the shipowner, without the formal amendment of the 1992 CLC Convention, is the right way forward.

At the March 2005 IOPC Fund Assembly session, the International Group of P&I Clubs indicated that it decided to increase, on a voluntary basis, the limitation amount for small tankers, by means of an agreement to be known as the STOPIA (*Small Tankers Oil Pollution Indemnification Agreement*). A voluntary increase of liability, in order to prevent the amendment of a certain international regime (convention) is definitely a new approach in international maritime law.

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<sup>55</sup> The European Commission proposed for example: lowering the threshold for loss of the limitation right of the shipowner (intent/recklessly+knowledge → gross negligence), and removing the protection of certain other key players from practically any liability at all.

<sup>56</sup> For more information about this process please consult the IOPC web site at: [www.iopcfund.org](http://www.iopcfund.org)

<sup>57</sup> Shipowners and their insurers took the view that the issues related to shipowners' liability should not be reopened, since to do so would be detrimental to the positions of victims of oil pollution. They pointed out that the international compensation system has at its centre the protection of the victim of oil pollution and not the achievement of other "policy reasons", as the safety of navigation or decreasing the number of oil spills. The majority view was that questions of civil liability should be kept separate from questions of criminal liability.

## V.1 STOPIA 2005

The STOPIA 2005 was basically a proposal for a voluntary increase in the limit of liability for small tankers (up to 29,548 GT) under CLC which would be applied only for “oil pollution damage” in state parties to the 2003 Protocol. The main reason for the devising of STOPIA were data from various studies (*some of them undertaken by the Fund itself*), according to which the main imbalance between the contributions paid by the oil industry and shipowning interests is seen with regard to small tankers (*less than 30.000 GT*).<sup>58</sup>

Under STOPIA the owners of relevant tankers of 29,548 GT or less would contract with the 1992 Fund to reimburse claims paid in excess of the relevant limit of liability under the 1992 CLC up to SDR 20 million per incident. This voluntary agreement therefore gives to the Fund the right to claim reimbursement from the shipowners P&I Club for the difference actually paid and 20 million SDR.<sup>59</sup>

At the Assembly’s 2005 Session, held in October of the same year, the International Group of P&I Clubs made another proposal, subject to the condition that the revision of the conventions was not carried forward. The international group of P & I Clubs proposed to extend STOPIA to all State Parties to the 1992 Civil Liability Conventions and to establish a second agreement to be known as the tanker oil pollution indemnification agreement (TOPIA), through which Clubs would indemnify the Supplementary Funds in respect of 50 % of the amounts paid in compensation by the Fund.<sup>60</sup> These two agreements have become known as STOPIA and TOPIA 2006.

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<sup>58</sup> It is presumed that this imbalance is caused by the low limits of liability of the shipowners in cases small tankers are involved. For tankers of 5.000 GT or less the shipowner is entitled to limit its liability to a fixed amount of 4.510.000 SDR.

<sup>59</sup> STOPIA 2005 applied to all ships insured by one of the P&I Clubs that are members of the International Groups of such Clubs and reinsured through the Group’s pooling agreement. The agreement came into force on 3<sup>rd</sup> March 2005, the date of the entry into force of the Supplementary Fund Protocol.

<sup>60</sup> After the dismantlement of the Working Group, the Assembly of the IOPC Fund instructed the Director to co-operate with the international group of P & I Clubs (*on behalf of the shipping industry*) and with the OCIMF (*Oil Companies International Marine Forum*) before the official agreement package was submitted to the Assembly and to provide technical and administrative advice with a view of consolidating the package and ensure that it is legally enforceable.

## V.2 STOPIA 2006 and TOPIA 2006

As a result of discussion between the Director of the IOPC Fund, the International Groups of P&I Clubs and OCIMF, the International Group of P&I Clubs, has developed a voluntary package, consisting of a revised Small Tanker Oil Pollution Indemnification Agreement (*STOPIA 2006*) and the TOPIA (*Tanker Oil Pollution Indemnification Agreement*).

STOPIA 2006 and TOPIA 2006 are contractually binding agreements between shipowners, which nonetheless gave to the relevant IOPC Fund the right of enforcement. The shipowners therefore have still the right to limit their liability or exclude their liability according to the limits embodied in the 1992 Civil Liability Convention, while on the other hand the victims must still claim compensation from the 1992 and 2003 Funds accordingly. However, the TOPIA and STOPIA give to shipowners an enforceable right to claim reimbursement from the P&I Clubs up to the limits envisaged by the two voluntary schemes.

The aim of the new package is clearly to achieve a balance of contributions between the oil industry and the shipowning interests, both with regard to accidents which would occur in State parties to the 1992 CLC and Fund Convention (STOPIA 2006) and in cases where the 2003 Supplementary Fund is involved (TOPIA 2006). The difference between the STOPIA 2005 and the revised STOPIA is that the revised voluntary schemes applies to all States in which the 1992 Fund Protocol is in force, and no longer only to State parties to the 2003 Supplementary Fund Protocol.

STOPIA 2006 applies for pollution damage in States for which the 1992 Fund is in place. The said agreement is a contract between owners of small tankers (of 29.548 GT or less) to increase, on a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil Liability regime. The contract will apply to small tankers entered in one of the P&I Clubs which are members of the international group and reinsured through the pooling agreement of the International group.

The characteristics of STOPIA 2006 are therefore the same as those of STOPIA 2005, with the notable differences that the new STOPIA applies to States parties of the 1992 Fund Convention and not only to those which are also parties to the 2003 Supplementary Fund protocol.<sup>61</sup> The effect of STOPIA

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<sup>61</sup> The main substantive difference between the original STOPIA and STOPIA 2006 is that, whereas the original STOPIA applied only to pollution damage in Supplementary

is therefore that the maximum amount of compensation payable by owners of all ships of 29.548 GT or less would be 20 million SDR (*instead of 4.510.000 SDR for tankers of less than 5000 GRT*). The Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

The 1992 Fund will, in respect of ships covered by STOPIA, continue to be liable to compensation claimants if, and to the extent that, the total amount of admissible claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. In other words, if the incident involves a ship to which STOPIA applies, the 1992 Fund will be entitled to indemnification from the shipowner for the difference between the shipowner's liability under the 1992 CLC and FUND Convention.

### V. 3 TOPIA 2006

As the scope of application of the STOPIA has been extended to all States parties to the 1992 Fund, the international group of P&I Clubs proposed another voluntary scheme regarding incidents which would have occurred within the 2003 Supplementary Fund Protocol. Also with regard to TOPIA 2006, the aim has been to achieve a balance of contributions between the shipowning interest and the oil industry. TOPIA 2006 is based on the same principles as STOPIA 2006, however, there are also important differences. First of all TOPIA does not apply only to small tankers (as is the case with STOPIA) but to all tankers entered in one of the P&I Clubs, which are members of the International Group and reinsured through the pooling agreement. The functioning of TOPIA is somehow easier, as under TOPIA 2006, the owner of the ship involved in the incident will indemnify the Supplementary Fund for 50 % of the compensation the Fund pays under the Supplementary Fund Protocol for oil pollution to a Supplementary Fund member state. Therefore, if the incident involves a ship to which TOPIA 2006 applies, the Supplementary Fund will be entitled to indemnification by the shipowner of 50 % of the compensation payments it had made to claimants.

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Fund member states, STOPIA 2006 will also apply to pollution damage in all other 1992 Fund Member States.



The STOPIA and TOPIA agreements therefore do not affect the position of victims of oil pollution, as they only give to the Funds an enforceable right to claim reimbursement for compensation already paid from the Fund.<sup>62</sup>

## VI. CONCLUSION

The system embodied in the various CLC and Fund Conventions has been working remarkably well for almost 40 years and it is without exaggerating one of the most successful compensation schemes in existence. The disaster of the tankers Erika and Prestige showed, however, that the limits of liability provided by the mentioned conventions are too low to cover the entire damage which could arise as a result of a single accident of massive proportions. An important improvements was achieved with the entry into force of the 2003 Supplementary Fund protocol in 2005, which established an additional fund of compensation, but only in cases when the damage occurs within the territory (including the EEZ or equivalent zone) of state parties to the protocol. The introduction of a third tier of compensation, which was welcomed especially by EU States and Japan, has at least formally increased the burden of contributions of the oil industry (*at least in State Parties to the 2003 Protocol*), as the contributors have to pay two separate contributions to the 1992 and to the 2003 Supplementary Fund. The shipowning interest (P&I Clubs) reacted with the adoption of two voluntary schemes STOPIA and TOPIA. This is an interesting precedent in international law and it shows the desire to retain the balance of contributions between shipowning interest and oil industry. It also shows the prevailing desire of member states that the basic principles of the CLC Convention should remain unaltered. It also shows that the majority of State parties are of the opinion, that the international compensation system must have at its centre the protection of the victim of oil pollution and not the achievement of other “policy reasons”, such as the safety of navigation or decreasing the number of oil spills. It is our conclusion therefore that in order

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<sup>62</sup> STOPIA and TOPIA provide that a review of the functioning of the system should be carried out in 2016 and later on at the 5-year intervals. If the review reveals that either a shipowner or oil receivers have borne a proportion exceeding 60% of the overall costs of such claims, measures shall be taken for the purpose of maintaining an approximately equal apportionments.



to fully protect the possible victims of oil pollution it is necessary for states to join all three tiers of compensation (the 1992 CLC, the 1992 Fund and the 2003 Supplementary Fund Protocol). With this regard the accession of Slovenia and Croatia to the 2003 Supplementary Fund protocol is of utmost importance. As the CLC and the various Funds conventions cover only pollution damage caused by persistent oil carried in bulk as cargo, it is imperative that the Bunker Convention (*covering spills of bunker oils*) and the HNS convention (*hazardous and noxious substances*) enter into force as soon as possible. As a matter of fact, it does not make any difference to a victim of oil pollution whether pollution damage has occurred as a result of a spill of persistent oil, bunker oil or chemicals. In all cases, but especially in cases of accidental ship generated pollution, victims should be awarded a fair and quick compensation for their loss.

#### Sažetak

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#### PROTOKOL IZ 2003. O DOPUNSKOM FONDU: VAŽNO POBOLJŠANJE MEĐUNARODNOG SUSTAVA NAKNADE ŠTETE ZBOG ONEČIŠĆENJA ULJIMA

*U radu se raspravlja o novim događanjima na polju odgovornosti i naknade štete zbog onečišćenja uljima. Upozorava se na koristi od pristupanja jadranskih zemalja Protokolu o Dopunskom fondu iz 2003. Međunarodni sustav za naknadu štete zbog onečišćenja uljima, koji je u određenoj mjeri sačinjen s obzirom na pravila o nuklearnoj šteti, prilično je dobro funkcionirao u posljednjih četrdeset godina. Jedan je od najuspješnijih postojećih sustava naknade štete. U radu se naglašava činjenica da samo članstvo u sva tri stupnja sustava naknade štete (pokrivenog CLC konvencijom iz 1992., Konvencijom o Fondu iz 1992. i Protokolom o Dopunskom fondu iz 2003.) može osigurati punu financijsku zaštitu žrtvama onečišćenja uljima te da je pristupanje Republike Slovenije i Republike*

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*Hrvatske Dopunskom fondu iz 2003. važan korak u ostvarenju toga cilja. Slabost sustava je u tome što međunarodne konvencije koje su trenutačno na snazi ne pokrivaju izlivanje ulja koje je brodsko gorivo (uz određene iznimke u pogledu tankera), kao ni opasne i štetne tvari. Predlaže se da jadranske zemlje preuzmu važnu ulogu u promociji Bunker konvencije i HNS konvencije koje još nisu na snazi. Predlaže se da se pitanja građanske odgovornosti rješavaju odvojeno od pitanja kaznene odgovornosti. Izmjene CLC konvencije se u ovom trenutku ne preporučuju.*

*Ključne riječi: odgovornost i naknada štete za onečišćenje uljima, Protokol o Dopunskom fondu iz 2003., konvencije pomorskog prava, zaštita morskog okoliša*